

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RUSSELL JOHN SCHOENAUER,

Defendant.

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CRIMINAL NO. 01-65

JURY INSTRUCTIONS

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INSTRUCTION NO. 1

INTRODUCTION

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, *all* instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

DUTY OF JURY

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NO. 3

EVIDENCE

I have mentioned the word “evidence.” The “evidence” in this case consists of:

- 1) the testimony of witnesses,
- 2) the documents and other things received as exhibits,
- 3) the facts that have been stipulated -- this is, formally agreed to by the parties,
- 4) the facts that have been judicially noticed -- this is, facts which I say you may, but are not required to, accept as true, even without evidence.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

- 1) Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.
- 2) Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
- 3) Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
- 4) Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NO. 4

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence—such as the testimony of an eyewitness. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury be satisfied of a defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

INSTRUCTION NO. 5

CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of a defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 6

INDICTMENT

The Fourth Superseding Indictment in this case charges the defendant with three different crimes.

(1) Counts One, Two and Three of the Fourth Superseding Indictment each charge that the defendant, RUSSELL JOHN SCHOENAUER, having previously been convicted in an Iowa District Court for the misdemeanor crime of domestic violence, did knowingly and intentionally possess in and affecting commerce, firearms, which had been transported and received in interstate commerce.

Count One alleges that the activity occurred on or about November 21, 2000. Count Two alleges that the activity occurred on or about November 22, 2000. Count Three alleges that the activity occurred on or about January 18, 1999.

The defendant has pleaded not guilty to each crime with which he is charged.

As I told you at the beginning of trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. So the presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the Government proves, beyond a reasonable doubt, each essential element of the crime charged.

Keep in mind that you must consider, separately, each crime charged against the defendant, and must return a separate verdict for each of those crimes charged.

INSTRUCTION NO. 7

DEFINITION OF “ON OR ABOUT”

The Fourth Superseding Indictment charges that the offenses were committed “on or about” certain dates.

Although it is necessary for the government to prove beyond a reasonable doubt that each of the offenses were committed on a date reasonably near the dates alleged in the Fourth Superseding Indictment, it is not necessary for the government to prove that the offenses were committed precisely on the dates charged.

INSTRUCTION NO. 8

PRESUMPTION OF INNOCENCE

The defendant is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion which might arise from the arrest or charge of the defendant or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial and alone is sufficient to find him not guilty. The presumption of innocence may be overcome only if the prosecution proves, beyond a reasonable doubt, each element of the crime charged against the defendant.

INSTRUCTION NO. 9

COUNT ONE: ELEMENTS OF THE OFFENSE (PROHIBITED PERSON IN POSSESSION
OF A FIREARM)

The crime of being a prohibited person in possession of a firearm, as charged in Count One of the Fourth Superseding Indictment, has three essential elements which are:

1. The defendant had been convicted of a misdemeanor crime of domestic violence;
2. Thereafter, on or about November 21, 2000, in the Southern District of Iowa, the defendant knowingly possessed a firearm ; and
3. The firearm was transported across a state line at some time before the defendant's possession of it.

If you have found beyond a reasonable doubt that the firearm in question was manufactured in a state other than Iowa and that the defendant possessed that firearm in Iowa then you may, but are not required to, find that it was transported across a state line.

For you to find the defendant guilty of the crime charged under Count One, the government must prove all of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of this crime under Count One.

INSTRUCTION NO. 10

COUNT TWO: ELEMENTS OF THE OFFENSE (PROHIBITED PERSON IN POSSESSION
OF A FIREARM)

The crime of being a prohibited person in possession of a firearm , as charged in Count Two of the Fourth Superseding Indictment, has three essential elements which are:

1. The defendant had been convicted of a misdemeanor crime of domestic violence;
2. Thereafter, on or about November 22, 2000, in the Southern District of Iowa, the defendant knowingly possessed a firearm ; and
3. The firearm was transported across a state line at some time before the defendant's possession of it.

If you have found beyond a reasonable doubt that the firearm in question was manufactured in a state other than Iowa and that the defendant possessed that firearm in Iowa then you may, but are not required to, find that it was transported across a state line.

For you to find the defendant guilty of the crime charged under Count Two, the government must prove all of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of this crime under Count Two.

INSTRUCTION NO. 11

COUNT THREE: ELEMENTS OF THE OFFENSE (PROHIBITED PERSON IN POSSESSION
OF A FIREARM)

The crime of being a prohibited person in possession of a firearm , as charged in Count Three of the Fourth Superseding Indictment, has three essential elements which are:

1. The defendant had been convicted of a misdemeanor crime of domestic violence;
2. Thereafter, on or about January 18, 1999, in the Southern District of Iowa, the defendant knowingly possessed a firearm; and
3. The firearm was transported across a state line at some time before the defendant's possession of it.

If you have found beyond a reasonable doubt that the firearm in question was manufactured in a state other than Iowa and that the defendant possessed that firearm in Iowa then you may, but are not required to, find that it was transported across a state line.

For you to find the defendant guilty of the crime charged under Count Three, the government must prove all of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of this crime under Count Three.

INSTRUCTION NO. 12

DEFINITIONS

The term “misdemeanor crime of domestic violence” means an offense that is a misdemeanor under federal or state law *and* has, as an element, the use or attempted use of physical force. To be considered a “misdemeanor crime of domestic violence,” the crime also must have been committed by:

1) a person who is cohabiting with or has cohabited with the victim as a spouse, or 2) by a person similarly situated to a spouse of the victim.

The term “firearm” means any weapon which will or is designed to, or may be readily converted to expel a projectile by the action of explosion.

INSTRUCTION NO. 13

PROOF OF INTENT OR KNOWLEDGE

Intent or knowledge may be proved like anything else. You may consider statements made and acts done by the defendants, and all facts and circumstances in evidence which may aid in the determination of the defendant's knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

INSTRUCTION NO. 14

REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 15

STATUTE

Title 18, United States Code, Section 922(g)(9) provides in pertinent part:

It shall be unlawful for any person . . . who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm . . .; or to receive any firearm . . . which has been shipped or transported in interstate or foreign commerce.

Title 18, United States Code, Section 921(a)(33)(A) provides in pertinent part:

[T]he term “misdemeanor crime of domestic violence” means an offense that—

- (i) is a misdemeanor under Federal or State law; and
- (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by . . . a person who is cohabiting with or has cohabited with the victim as a spouse . . . or by a person similarly situated to a spouse . . . of the victim.

INSTRUCTION NO. 16

FORM OF VERDICT

Submitted to you with these instructions are verdict forms for the crimes charged. When you reach your verdict, have your foreperson sign the appropriate verdict forms. All twelve jurors must agree unanimously to the verdict reached on each count. When you have reached your verdicts, notify the Court Security Officer.

INSTRUCTION NO. 17

ELECTION OF A FOREPERSON/DUTY TO DELIBERATE

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict - whether guilty or not guilty - must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the Government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fifth, your verdict must be based solely on the evidence and on the law which I have given to

you in my instructions. The verdict whether guilty or not guilty must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Dated this ____30th____ day of April, 2002.



ROBERT W. PRATT
U.S. DISTRICT JUDGE